Reserved

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HIGH COURT OF UTTARANCHAL AT NAINITAL

Second Appeal No. 6 of 2003

1. State of Uttaranchal
2. Divisional Forest Officer, Tarai West
Forest Division, Ramnagar

….Defendant/Appellants

Versus

Lok Mani Sharma s/o Sri Chandrasheker Sharma
Village Hariawala, Tehsil Kashipur,
District Udham Singh Nagar Plaintiff/ Respondent

Standing Counsel for the appellant
Sri C.K. Sharma, Advocate for the respondent.

Dated: February 7, 2006

Hon'ble Rajesh Tandon J.

Heard Standing Counsel for the appellants and Sri C.K. Sharma counsel for the respondent.

The present appeal has been preferred by the defendant appellant against the judgment and decree dated 10.10.2002 passed by the Additional District Judge, Kashipur in Civil Appeal No. 24 of 2002.

Briefly stated the respondent Lok Mani Sharma filed a suit for permanent injunction against the appellants in the Court of Civil Judge (J.D.) Kashipur, which was registered as Original Suit No. 2 of 1998. According to the plaintiff he is the permanent resident

of village Hariawala, Tehsil Kashipur, District Udham Singh Nagar. He has been in possession over the land of Gata No. 174 area 2.27 hectare since long. The plaintiff used this land for plantation. The land is recorded in the name of the plaintiff in Verg-12 in revenue records. During consolidation proceedings, the Consolidation Officer vide order dated 13.6.1997 directed that the land be recorded in the name of the plaintiff in Verg 1-ka as Bhumidhar with transferable rights. No other person then the plaintiff had ever been in possession over the land in question. The plaintiff alleged that the defendants were trying to take illegal possession over the land in question and wanted to cut down the trees planted by the plaintiff over the land. Hence, the suit.

The defendant- appellants contested the suit and filed their written statement in the trial Court. They denied the plaint allegations that the land in question belonged to the plaintiff. They contended that the land in question is reserved forest and full of trees. The provisions of U.P. Consolidation of Holdings Act 1953, are not applicable over the land in question. The land is the property of Forest Department and is in possession of Forest Department. The plantation over the land was done by the Forest Department. On 14.2.1998 the plaintiff was arrested by the Police for the offence of taking forceful possession over Forest Check post and a criminal case under section 448, 353

and 504 I.P.C. was registered against the plaintiff. The suit is not maintainable against the defendants.

On the pleadings of the parties following issues were framed:

1. Whether the plaintiff is the owner and in possession over the land in suit ?
2. Whether any cause of action arose to the plaintiff against the defendants ?
3. Whether the plaintiff is entitled to any other relief ?
4. Whether the suit of the plaintiff is barred under section 80 C.P.C. If so, it effect ?
5. Whether State of Uttar Pradesh is necessary party to the suit ? If so, its effect ?

The plaintiff in support of his case examined himself as P.W.1 also examined P.W.2 Nazir Hussain and P.W.3 Awadhesh Kumar. He also filed documentary evidence. The defendants examined D.W. 1 Jagdishwar Singh and also filed documentary evidence.

The trial Court in reply of issues no. 1 & 2 held that the plaintiff is not the owner and in possession over the land in question. No cause of action arose for the plaintiff to file the suit. In reply of issue no. 4 the trial Court held that the suit is not barred by section 80 C.P.C. and thus decided this issue against the defendants. In answer to issue no. 5 the trial Court held that State of Uttar Pradesh was a necessary party and the suit is bad for non-joinder of necessary party.

Thus the trial court dismissed the suit of the plaintiff vide judgment and decree dated 10.4.2002.

Aggrieved against that order, the plaintiff filed appeal in the Court of Additional District Judge, Kashipur which was registered as Civil Appeal No. 24 of 2002.

On the basis of the arguments raised by the parties the first appellate court framed two points for determination:

1. Whether the plaintiff –appellant is the owner and in possession over the land in dispute ?
2. To what relief, is the plaintiff entitled ?

The first appellate Court has held that the plaintiff has been in possession over the land in dispute for the last 50-55 years before that his father was in possession over the land. The land in dispute was recorded in the name of the plaintiff in Verg-12 in the revenue records. The father of the plaintiff planted uquiliptis trees over the land. The name of the plaintiff was recorded as Bhumidhar with transferable rights by the order of C0nsolidation officer during consolidation proceedings. The consolidation proceedings completed on 15.9.97 and thus the order passed by Consolidation Officer on 16.5.97 had become final. The first appellate court has also held that according to the Consolidation Form No. 45, there is plantation over Gata No. 174 area 2.274 hectare. The plantation was made by the father of the plaintiff and agriculture land was being cultivated by the plaintiff. On the basis of the

statement of P.W.3 Avadhesh Kumar, who was appointed as Vakil Commissioner by the Court, the lower appellate court has held that the hut constructed on the disputed land was constructed by the plaintiff and the defendants had falsely implicated the plaintiff in the criminal case for taking forcible possession over the residence constructed for forest guard. The land in question was originally belonged to Sri Damodar Pant, Zamindar which was given on lease to the father of the plaintiff and on the applicability of the provisions of Z.A. & L.R. Act, the father of the plaintiff became Bhumidhar over the land in dispute. The lower appellate Court has also held that the defendants had failed to adduce and documentary evidence to prove that the plantation over the land in disputed was done by the Forest department and against the assertion of the defendants the plaintiff vide Ex. 3 has become successful to prove that the plantation over the land in dispute was done by him and his father. Thus after considering the evidence on record the lower appellate court has held that the plaintiff is the owner and in possession over the land in dispute and accordingly, decreed the plaintiffs suit vide judgment and decree dated 10.10.2002. Feeling aggrieved the defendants filed the present second appeal before this Court.

The second appeal was admitted vide order dated 22.01.2003 on the following substantial question of law:

A. Whether, the impugned judgment and decree as passed by the learned Additional District Judge, Kashipur, District Udham Singh Nagar is a part of reserved forest over which a dense forest is existing and which cannot be used for any other purposes except for forest purpose. As such the impugned judgment and decree is in contravention of the judgment as delivered by the Hon'ble Supreme Court of India and recorded in AIR 1996 SC 1228.

B. Whether, the finding as recorded by the learned Additional District Judge, Kashpur, District Udham Singh Nagar are against the finding as recorded by the learned Trial Court and in contravention to the well established law. Hence the impugned judgment and decree is not sustainable in the eyes of law.

C. Whether, the Notification issued under Section 20 of the Indian Forest Act (Act No. 16 of 1927) declaring the land as reserved forest is binding in Consolidation Authorities in same way as a decree of Civil Court. "Consolidation Authorities cannot go beyond Notification as such any finding and judgment and decree as passed by the learned Additional District Judge which are based on illegal earlier order dated 16.5.1997 of the Consolidation Officer and later on rectified by the Consolidation Officer himself vide his order dated 3.3.1998. Hence,

the impugned judgment and decree is a nullity and is liable to be set aside with costs.

D. Whether, in any view of the case the impugned judgment and decree is not maintainable and deserve to be set aside.

FINDINGS

Substantial Question of Law A & B.

The plaintiff filed the suit for perpetual injunction against the defendants-appellants on the assertion that he is the owner and in possession of the land in suit since the time of his father. His father obtained the land on lease from the then Zamindar and also planted equiliptis trees on that land and they also used to cultivate a portion of land. As against this the defendants claimed that the land in suit is reserved forest land and the trees were planted by the Forest Department over the land in suit. They also asserted that on 14.2.1998 the plaintiff forcibly took possession over the Post constructed by them for Forest Guard on the land in suit for which a criminal case under section 448, 353 and 504 I.P.C. was registered against the plaintiff.

The contention of the appellant is that the land in question was green forest and was in possession of the Forest Department. The plantation was also made over the land by the Forest Department. In support of his allegations the plaintiff the petitioner filed copy of consolidation Form No. 45 (Ex. 1). In this revenue record the name of the plaintiff has been shown over

Gata No. 174 area 2.274 hectare as Verg-12. In that paper it has also been mentioned that in compliance of order dated 12.6.96 passed by the Consolidation Officer the name of Sri Lok Mani Sharma be deleted from Verg-12 and he be recorded as Bhumidhar with transferable rights as Verg-1. The plaintiff also filed copy of the judgment dated 16.3.1997 passed by the Consolidation Officer in Case No. 1156 Lokmani Sharma vs. State which is Ex. 3 on record. The Consolidation Officer held the possession of the plaintiff over the land in dispute in the following words:

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Plaintiff examined himself as P.W.1 and stated on oath that he is in possession over the land in suit. His father planted trees over the land about 40 years ago and he was also doing agriculture over the land for

about 25 years ago. The statement of P.W.1 plaintiff was fully supported by P.W.2 Nazir Hussain. This witness has stated that he had seen the plaintiff and his father in possession over the land in suit. The planted trees and were doing agriculture over that land since years ago. The plaintiff also examined P.W.3 Awadhesh Kumar. He stated that he was appointed Advocate Commissioner by the Court to inspect the land in dispute. He inspected the land in dispute after giving notice to the parties. He prepared his report in presence of three witnesses. He proved his report Ex.8 on record. According to this witness, there were Shisham and Uquiliptis trees and wheat crop was cultivated on five bighas land. He found a hut in which a cot with bed was lying. There were also two chairs on which the name of the plaintiff was written. Some utensils were also found in the hut. According to the report of Advocate Commissioner the plaintiff constructed the hut.

As against the evidence adduced by the plaintiff the defendants examined D.W.1 Jagdishwar Singh. He stated that Forest Guard Chauki was constructed by the Forest Department over the land in suit. He also stated that the plaintiff took forcible possession over that chauki in the year 1998 and F.I.R. was lodged against the plaintiff. This witness has stated that plantation was done by the Forest Department over that land after the year 1974. However, the defendants failed to produce any documentary evidence i.e. bill,

estimate or any other document regarding construction of Forest Guard Chawki on the disputed land any document regarding plantation over the land in dispute. If any construction was raised or plantation was done by the Forest Department, certainly there must be some official records regarding the expenditure made by the Department on these works but the bear statement without supported by any official record, by an officer of the Forest Department even who was not posted at disputed site at the relevant time, cannot be believed at all. Thus I find that the plaintiff has successfully proved that he has been in possession over the land in suit since long. The land was given to his father by the then Zamindar Sri Damodar Dutt Joshi on lease. His father was Sirtan on that land and by virtue of application of the provisions of U.P.Z.A. & L.R. Act, the plaintiff has become Bhumidhar over the land in suit. Thus the lower appellate court was fully justified in holding that the plaintiff was the Bhumidhar and in possession over the land in suit and the land in suit is not a reserved forest.

Substantial Question C & D:

The defendants have submitted that the Government issued a notification under Section 20 of the Indian Forest Act on 16th July6 1974 and by virtue of that notification the land vested in Forest Department as reserved forest. The defendants have filed a copy of that notification which is paper no. 22-Ga on record. The Government has given power under

section 3 of the Indian Forest Act, 1927 to constitute any forest-land or waste-land as reserved forest after issuing notification under section 4 of the Act. Section 3 of the Act reads as under:

3.Power to reserve forest- *The state Government may constitute any forest- land or waste-land which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forest-produce or which the Government is entitled, a reserved forest in the manner hereinafter provided.*

A reading of Section 3 of the Indian Forest Act, shows that the Government may declare reserved forest only to that land which is (a) Forest land (b) Waste-land or (c) over which the Government has proprietary rights. The defendants have failed to prove that before the date of notification i.e. 16th July 1974, the land in suit was either forest land, waste-land or the land over which the Government had proprietary rights. Against that the plaintiff has proved that the land was recorded in his name in the revenue records. The land was leased out to the plaintiff's father by the then Zamindar and his father was Sirdar over the land and by application of the provisions of section 131 of U.P. Z.A. & L.R. Act, he has become Bhumidhar of the land in dispute.

Section 131 of U.P.Z.A. & L.R. Act was amended vide notification No. 226(1) IA.2-1(2)-69 dated June 30, 1969. The extract of the Notification is quoted below:

"In exercise of the powers under clause (b) of sub section (1) of section 2 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act 1950 (U.P. Act No. 1 of 1951), (hereinafter referred to as "the said Act") the Governor is pleased to direct that the said Act shall with effect from the first day of July, 1969, apply to all estates of parts thereof, owned by the State Government, situate in the villages within the Tahsils/Peshkaris of Haldwani Kaladhungi, Ram Nagar, Kichcha, Bazpur, Sitarganj and Khatima in the Nainital District (other than village or portions thereof specified in Schedule 1, appended thereto) and also situate in the Kham village of Garhwal Bhabar Government Estate in the Garhwal District in which no person hs rights as an intermediary as defined in clause (12) of section 3 of the said Act, subject to the modifications and amendments, specified in Schedule II appended hereto.

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8 13 For Section 131, the following shall be substituted:

"[3] Every person belonging to any of the following classes shall be called a Sirdar and shall have all the rights and he subject to all the liabilities conferred or imposed upon sirdars by or under this Act; namely-

(a) every person who, on the date immediately preceding the appointed day held land as-

(i) an occupancy tenant

(ii) a hereditary tenant,

(iii) a grantee at favourable rate of rent,

(iv) a lessee holding a lease under the provisions of Government Grants Act 1985 and having rights of a hereditary tenant under the terms of the lease, but not possessing the right to transfer the holding by sale.

(b) Every person who is admitted as sirdar of vacant land under the provisions of this Act.

(c) A tenant in any of the 42 Buxari villages specified in the annexure, appended hereto who was recorded in Class X (1) in the Khatwal of the previous agricultural year and

(d) Every person who in any other manner acquires the rights of a sirdar under or in accordance with the provisions of this Act."

Thus by virtue of the aforesaid amendment the lease holders has become Sirdar on 1.7.1969 and as on the appointed day the plaintiff was in possession of the land in dispute and acquired rights as sirdar and by application of the provisions of U.P.Z.A. & L.R. Act, he became Bhumidhar of the land. Thus on the date of alleged notification the plaintiff was Bhumidhar of the land in suit and the alleged notification was issued in

violation of the provisions made under the Indian Forest Act and was issued without jurisdiction.

The Consolidation Court was thus right to ignore such notification and has rightly passed order under Rule 109 of U.P. Consolidation of Holdings Act for recording the name of the plaintiff as Bhumidhar of Verg-1 (ka) over Gata No. 174 area 2.274 hectare. The proceedings before the Consolidation authorities and before the Civil Court were not barred by the provisions of section 27 of the Indian Forest Act. The lower appellate court in the present case recorded findings that the land in dispute was not covered by the said notification in as much as there was no supporting and admissible evidence on the record to connect the land in dispute with the land mentioned under section 3 of the Indian Forest Act but it was the Bhumidhari land of the plaintiff over which the Government has no right or title. Thus the notification dated 16th July 1974 issued by the Government under section 4/20 of the Indian Forest Act, was violative to the provisions of law and thus nullity. Thus the judgment and decree passed by the Consolidation authorities and the Civil Court are not barred under section 27 of the Indian Forest Act.

The findings arrived at by the lower appellate Court are based on the facts and evidence on record and I find no reason to interfere in the judgment and decree passed by the lower appellate Court. The appeal deserves to be dismissed.

Accordingly, the appeal is dismissed with costs.

Dated: February 7, 2006

* Dhyani **Rajesh Tandon J.**